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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
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10 UNITED STATES OF AMERICA,	)	Case No. 15-cv-02065-BTM-JLB
	)	
11 Petitioner,	)	ORDER GRANTING PETITION
	)	TO ENFORCE INTERNAL
12 v.	)	REVENUE SUMMONS
	)	
13 DARIO MOSCOSO,	)	
	)	
14 Respondent.	)	
	)	
15	)	
16	)	

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18 The Government has petitioned the Court for an order enforcing the Internal  
19 Revenue Service (“IRS”) Summons issued to Dario Moscoso (“Respondent”). On  
20 November 12, 2015, the Court issued an order to show cause why the IRS  
21 summons should not be judicially enforced. On November 19, 2015, the IRS  
22 personally served a copy of the order to show cause, the Government’s petition to  
23 enforce and supporting declaration upon Respondent. Respondent did not file a  
24 written response to the order to show cause.

25 The hearing was held on the Government’s petition on December 4, 2015 at  
26 2:00 p.m. Assistant United States Attorney Leslie M. Gardner represented the  
27 Government. Respondent appeared in propria persona. For the reasons explained  
28 herein, the Government’s petition to enforce the summons is granted.

## BACKGROUND

On November 24, 2014, Peter Zarcharzuk, a Revenue Officer employed by the IRS, issued an IRS summons to Respondent. [Declaration of Revenue Officer Peter Zarcharzuk in Support of Petition (“Zarcharzuk Decl.”), ¶ 3.] The IRS is conducting an investigation to determine Respondent’s tax liabilities. The summons relates to the assessment of Respondent’s tax liabilities for the 1999, 2002, 2005, and 2006 tax years. [Id. at ¶ 2.] On November 25, 2014, Revenue Officer Zarcharzuk served a copy of the summons on Respondent by leaving an attested copy of the summons affixed to the front door at Respondent’s last and usual place of abode. [Id. at ¶ 4.]

The summons ordered Respondent to appear before the IRS on December 8, 2014 at 9:00 a.m. [Id. at ¶ 5.] On December 8, 2014, Respondent did not appear before the IRS as directed and did not provide any of the summonsed information. [Id.] The Office of Division Counsel of the IRS subsequently sent a letter to Respondent directing him to appear before the IRS on January 27, 2015. [Id. ¶ 6.] Respondent again failed to appear or provide any of the summonsed information or payment. [Id. at ¶ 7.]

On September 16, 2015, the Government petitioned the Court to enforce the summons. On November 12, 2015, the Court set a hearing date for this matter and ordered Respondent to show cause why he should not be compelled to comply with the IRS summons. Respondent did not file a written response to the order to show cause. Immediately prior to the Court’s hearing, Respondent provided Revenue Officer Zacharzuk with a signed copy of IRS Form 433-A, but has yet to provide any supporting documentation or to provide the summonsed testimony. On December 4, 2015, the Court held a hearing on the order to show cause.

## DISCUSSION

Pursuant to 26 U.S.C. § 7602(a)(1), the Secretary of the Treasury may “examine any books, papers, records, or other data which may be relevant of

1 material” in connection with “ascertaining the correctness of any return, making a  
2 return where none has been made, determining the liability of any person for any  
3 internal revenue . . . or collecting any such liability.” Section 7602(a)(1)  
4 authorizes the Secretary to issue summonses to compel persons in possession of  
5 such books, papers, records, or other data to appear and produce the same and/or  
6 give testimony.

7 In order to obtain judicial enforcement of an IRS summons, the United  
8 States “must first establish its ‘good faith’ by showing that the summons: (1) is  
9 issued for a legitimate purpose; (2) seeks information relevant to that purpose; (3)  
10 seeks information that is not already within the IRS’ possession; and (4) satisfies  
11 all administrative steps required by the United States Code.” Fortney v. United  
12 States, 59 F.3d 117, 119 (9th Cir. 1995) (citing United States v. Powell, 379 U.S.  
13 48, 57-58 (1964)). “The government’s burden is a ‘slight one’ and typically is  
14 satisfied by the introduction of the sworn declaration of the revenue agent who  
15 issued the summons that Powell requirements have been met.” Id. at 120. Once  
16 the government has made a prima facie showing that enforcement of the summons  
17 is appropriate, the burden shifts to the Respondent to show that enforcement of the  
18 summons would be an abuse of the court’s process. Powell, 379 U.S. at 58. The  
19 Supreme Court has characterized respondent’s burden as a heavy one. Id. The  
20 Government’s petition and Revenue Officer Zacharzuk’s supporting declaration  
21 satisfy all four elements of the Powell standard. First, the IRS is conducting an  
22 investigation with respect to the collectability of Respondent’s tax liabilities for the  
23 tax years 1999, 2002, 2005, and 2006. [Zacharzuk Decl., ¶ 2.] Such an  
24 investigation is expressly authorized by 26 U.S.C. § 7602(a). The Internal  
25 Revenue Code explicitly allows the issuance of a summons for the purpose of  
26 determining “the liability of any person for any internal revenue tax . . . or  
27 collecting any such liability . . .” 26 U.S.C. § 7602(a). Thus, the summons was  
28 issued for a legitimate purpose. Second, Revenue Officer Zacharzuk has declared

1 in his affidavit that the information requested by the summons may be relevant to  
 2 the IRS determination of Respondent's tax liability. [Id. at ¶ 10.] Third, the IRS  
 3 does not already possess the testimony, papers, records, and other data sought by  
 4 the summons issued to Respondent. [Id. ¶ 8.] Finally, the IRS has followed and  
 5 exhausted all required administrative steps, but Respondent has not complied with  
 6 the summons. [Id. at ¶ 9.] Thus, the Government has made prima facie showing  
 7 that it is entitled to judicial enforcement of the summons.

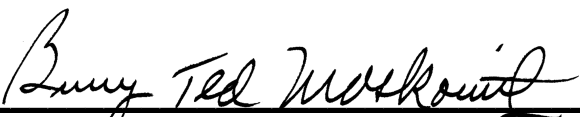
### 8 CONCLUSION

9 For the reasons set forth herein, the Government's petition to enforce the  
 10 IRS summons is GRANTED. Respondent, Dario Moscoso, is directed to appear  
 11 before IRS Revenue Officer Peter Zacharzuk or a designee, on January 13, 2016, at  
 12 10:00 a.m., at the offices of the Internal Revenue Service located at 333 W.  
 13 Broadway, Floor 9, San Diego, California, and to produce the documents and give  
 14 testimony as directed in the summons. The Government shall serve a copy of this  
 15 Order upon Respondent in accordance with Fed. R. Civ. P. 5, within 7 days of the  
 16 date that this Order is served upon counsel for the Government, or as soon  
 17 thereafter as possible. Proof of such service shall be filed with the Clerk of Court  
 18 as soon as practicable.

19 Respondent is hereby notified that failure to comply with this Order may  
 20 subject him to sanctions for contempt of court.

21 **IT IS SO ORDERED.**

22 **DATED:** December 11, 2015

23   
 24 Hon. BARRY TED MOSKOWITZ  
 25 Chief Judge  
 26 United States District Court  
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